

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT A. MACDONALD and ROBERT J. RACE

Appeal No. 2005-1559
Application No. 09/312,352

ON BRIEF

Before FRANKFORT, NASE and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 3 through 15, all of the claims remaining in this application. Claim 2 has been canceled.

Appellants' invention relates to a retaining wall block used in the construction of a retaining wall that is dry stacked (i.e., built without the use of mortar) and to a retaining wall formed by using multiple courses of such blocks. A further understanding of the

invention can be derived from a reading of independent claims 1 and 8 on appeal, a copy of which appears in the Appendix to appellants' brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Dawson	5,913,790	Jun. 22, 1999
Maguire et al. (Maguire)	5,951,210	Sep. 14, 1999

Claims 1 and 3 through 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Maguire in view of Dawson.

Rather than reiterate the examiner's commentary with regard to the above-noted rejection and the conflicting viewpoints advanced by appellants and the examiner regarding the rejection, we make reference to the final rejection (mailed October 8, 2003) and the supplemental answer (mailed November 22, 2004) for the examiner's reasoning in support of the rejection, and to appellants' brief (filed February 9, 2004) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's rejection before us on appeal will not be sustained. Our reasoning in support of that determination follows.

In rejecting claims 1 and 3 through 15 under 35 U.S.C. § 103(a), the examiner recognizes that Maguire discloses a dry stack type of concrete block which utilizes rows of knobs (32) formed in a top surface thereof and a plurality of grooves (30) formed in the bottom face of the block such that selected grooves and knobs of successive blocks are engaged with one another when blocks are stacked on top of one another (Fig. 3). The examiner notes that while Maguire indicates a preference for knobs of an oval shape, it is also indicated that the knobs may have a shape that is round (col. 3, lines 5-9). The examiner additionally makes note of the disclosure in Maguire (col. 4, lines 48-50) that the use of knobs and grooves eliminates the need for using pins, which can easily crack and destroy the retaining wall. Although the examiner does not identify any differences between the block of Maguire and that set forth in the claims on appeal, the examiner points to Dawson and the retaining wall block seen in Figures 1 and 2 thereof

having pins (44), pin holes and pin receiving pockets (40). The examiner then notes the disclosure in Dawson (col. 7, lines 16-37) regarding an alternative connection arrangement between successive rows or courses of blocks wherein extending knobs (46) on the top of the blocks engage surfaces (48) at the bottom of the blocks to connect, align and stabilize a second course of blocks (see, Figs. 9a, 9b and 11). From the teachings of the applied patents, the examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to "replace the round knobs of Maguire with pin holes in view of the teaching in Dawson and also in Maguire that pins and holes are alternatives for knobs and are considered equivalent parts for performing equivalent functions (final rejection, page 3, lines 12-15).

In the brief, appellants contend that the issue on appeal is whether a person of ordinary skill in the art would have modified the particular blocks disclosed in Maguire by substituting a pin-in-hole as shown in Dawson for the knobs of Maguire. Appellants urge that although Maguire acknowledges that pin-in-holes can be used to connect blocks, Maguire clearly teaches that pin-in-holes are not equivalent to knobs and that

they do not perform equivalent functions. The essence of appellants' position is that the numerous disadvantages of pin-in-hole connection systems pointed out by Maguire and the consequent advantages of Maguire's knob and groove connection system would clearly direct one of ordinary skill in the art away from substituting a pin-in-hole for the knobs of the Maguire block. We agree with appellants.

Like appellants, we find that in order for one of ordinary skill in the art to have made the substitution proposed by the examiner, such a person would have to ignore Maguire's teaching that such a substitution would result in a block system that is more difficult to stack and pallet, more difficult and costly to ship, would require more labor and time in constructing a retaining wall, and would result in a retaining wall that is more likely to shear stabilizing grid material resulting in a wall that is structurally unsafe. In that regard, we are of the view that the examiner failed to appreciate the extent to which

REVERSED

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